

C O P Y

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CONCORD, N.H.

1952

November 18

Frank D. Merrill, Commissioner,
Department of Public Works and Highways
State House Annex

Dear General Merrill:

In your letter dated November 3, 1952, you have asked whether you are authorized to issue a permit for a public utility to construct poles or towers outside the turnpike right of way for the purpose of suspending wires across it or to permit the crossing of that right of way by wires on poles or towers within the way.

This letter will briefly confirm my oral opinion that you are authorized to issue such a permit to a public utility under either of the stated conditions. My opinion is based upon the belief that Part 24 of the highway law contemplates the necessity of crossing the toll road as well as other highways and confers upon you the authority to permit such crossing. You are therefore authorized to grant permission for such crossing whenever in your opinion it may be done without jeopardizing or interfering with the maintenance and operation of the Turnpike as a limited access highway.

Sincerely yours,

Maurice M. Blodgett
Deputy Attorney General

MMB:MP

Sulo J. Tani — 3.

In addition to the above statutes, the specific authority to acquire the land in this particular instance is contained in the Public Laws of the 82nd Congress which I have above cited.

Very truly yours,

Gordon M. Tiffany
Attorney General

GHT/d

Sulo J. Tani -- 2.

This law clearly states that the authorization is "to establish or develop military installations and facilities by the construction, conversion, installation, or equipment of temporary or permanent public works, including buildings, facilities, appurtenances, and utilities" and, more particularly, for development of the "Portsmouth Municipal Airport, Portsmouth, New Hampshire: Airfield pavements, fuel storage and dispensing facilities, communications and navigational aids facilities and airfield lighting facilities, operational facilities, aircraft maintenance facilities, training facilities, troop facilities, family housing, administrative and supporting facilities, utilities, land acquisition, medical facilities, storage facilities, and shops" to the extent of \$46,558,000. See, Vol. I, U.S. Code Congressional and Administrative Service, 82nd Congress (1st Session) 1951, pages 773, 483 and 500.

In commenting upon the purpose of the above act, Senate Report #727 of the 82nd Congress indicates "The purpose of this bill is to authorize the Secretaries of the Army, Navy, and Air Force, under the direction of the Secretary of Defense, to construct specified military installations and facilities at locations in the continental United States and overseas and to authorize the appropriation of funds to carry out these projects."

It is therefore the inescapable conclusion that the purposes for which chapter 3 of the Revised Laws of New Hampshire were enacted by the Legislature are not so broad as to include the specific purposes for which the United States is acquiring the land in Kowington. Therefore, it cannot be said that the Land Use Board established under that chapter has any responsibility or authority in connection with this situation.

If further support were necessary for this conclusion it might easily be demonstrated that the procedure for condemnation of land by the federal government as established by the Acts of Congress is a comprehensive procedure and is in so many instances in direct conflict with the suggested procedure of the New Hampshire law that it would be impossible to follow the instructions of both sets of law. Accordingly, under established principles of constitutional law the provisions of the Acts of Congress prevail. As to the provisions under which the federal government will take steps to acquire this land, see:

Act of Aug. 1, 1888 25 STAT. 357
Act of Aug. 18, 1890 26 STAT. 316
Act. of July 2, 1917 40 STAT. 241
Act of Apr. 11, 1918 40 STAT. 518
Act of Aug. 12, 1935 49 STAT. 610, 611